

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Amy Palmer	Team: Team # 1	CCRB Case #: 200207786	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 08/11/2002 4:00 PM	Location of Incident: Southern Blvd. and Elmsmere	Precinct: 48	18 Mo. SOL 2/11/2004	EO SOL 2/11/2004	
Date/Time CV Reported Fri, 09/06/2002 5:00 PM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Fri, 09/06/2002 5:00 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Patrick Cotters	23235	895317	048 PCT
2. POM Julio Ortiz	15542	890694	048 PCT
3. POM Joaquin Morales	08527	921608	048 PCT
4. An officer			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Alex Torres	27260	927598	048 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Joaquin Morales	Abuse: PO Joaquin Morales stopped and questioned § 87(2)(b)	
B. An officer	Abuse: An officer frisked § 87(2)(b)	
C.POM Patrick Cotters	Discourtesy: PO Patrick Cotters spoke rudely to § 87(2)(b)	
D.POM Julio Ortiz	Discourtesy: PO Julio Ortiz spoke rudely to § 87(2)(b)	
E.POM Julio Ortiz	Off. Language: PO Julio Ortiz made remarks to § 87(2)(b) based upon the sexual orientation of § 87(2)(b)	

Synopsis

§ 87(2)(b) alleged that on 8/11/03, he was stopped and frisked by PO Torres, who issued him a § 87(2)(a) 160.50 summons. At this time, PO Cotters allegedly drove by and called § 87(2)(b) a “dickbreath.” Later that afternoon, PO Cotters arrested § 87(2)(b) § 87(2)(a) 160.50 and allegedly called § 87(2)(b) an “asshole.” Inside the stationhouse, § 87(2)(b) was allegedly screaming and cursing at PO Cotters, and PO Ortiz, who was present in the precinct at the time, called PO Cotters on the Nextel and stated, “This asshole you arrested is calling you names.” PO Ortiz also allegedly referred to § 87(2)(b) as a “faggot.”

§ 87(2)(b), § 87(2)(g)

[REDACTED]

Summary of Complaint

§ 87(2)(b) is a § 87(2)(b) year old man who was interviewed by the CCRB on 9/6/02 (Encl.11a-c). On 8/11/02, sometime between 2:30 and 4:30 PM, § 87(2)(b) was sitting in a vacant lot near Tremont Avenue and Southern Blvd. with his friend, whose name he only provided as § 87(2)(b). According to § 87(2)(b) the lot is a known drug location. § 87(2)(b) and § 87(2)(b) were drinking pina coladas out of the bottle and were not being loud or disruptive, nor were they drunk. Two uniformed officers approached in a beige unmarked car. § 87(2)(b) stated one of these officers, PO Torres (whose name he obtained from looking at his shield), issued § 87(2)(b) a § 87(2)(a) 160.50 summons. § 87(2)(b) was standing extremely close to the car while PO Torres was writing the summons, and PO Torres patted down § 87(2)(b) and § 87(2)(b)'s chest and leg areas from inside the car, while seated in the passenger side of the car. During this interaction, PO Cotters drove by on Elmsmere and called out “Hey, dickbreath” to § 87(2)(b) who did not reply.

§ 87(2)(b) walked up the street, while § 87(2)(b) remained in the lot. § 87(2)(b) stated that a few minutes later (as described to him by § 87(2)(b)) PO Cotters approached § 87(2)(b) and told him that they meant no disrespect, but if they saw him with § 87(2)(b) again, they’d arrest § 87(2)(b) every time they saw him. § 87(2)(b) himself observed PO Cotters speak to § 87(2)(b) about fifteen minutes after he’d driven by, but did not hear what was said.

About half an hour later, § 87(2)(b) was on the corner of Southern and Elmsmere, and PO Cotters pulled up and started harassing § 87(2)(b) telling him to leave the area. § 87(2)(b) told him he needed change for the bus, and PO Cotters left the area. § 87(2)(b) went to get change from inside a store, and when he came back out, encountered PO Cotters again. PO Cotters told him “We gave you a chance to leave, asshole, we asked you to leave before.” PO Cotters then handcuffed and arrested § 87(2)(b).

§ 87(2)(b) was put through the system for § 87(2)(a) 160.50, and received a summons numbered § 87(2)(b), which was illegible. In his interview, § 87(2)(b) produced a summons § 87(2)(a) 160.50 issued by PO Torres on 8/11/02. When § 87(2)(b) was in the cell in the stationhouse, there was a large Hispanic officer, approximately 240 lbs, with a mustache, bald on top, about 6’2”, who told him to stop whining like a faggot. This officer used a Nextel and spoke to PO Cotters, saying, “this asshole you arrested is calling you names” § 87(2)(b) encountered PO Cotters again two days later, and stated that at this time, the officer mentioned, “Oh, I heard you’re calling me names.”

Results of Investigation

Witness Contact Attempts

After being interviewed, § 87(2)(b) was advised that contact information for § 87(2) would be extremely helpful in evaluating his complaint. § 87(2)(b) did not provide any contact information for § 87(2) and stated that § 87(2) might only participate if his name was not used. On 1/3/03 the undersigned contacted § 87(2)(b) and requested that he contact § 87(2) about providing a statement and call back within the week. § 87(2)(b) did not contact the CCRB. Over a period of several months, § 87(2)(b) was contacted seven times via telephone and twice by letter. § 87(2)(b) never returned a call to the CCRB. On 3/24/03, § 87(2)(b) was finally contacted by telephone, at which point he had no contact information for § 87(2).

Officer Statements

Officer interviews and summons obtained from Bronx Criminal Court revealed that § 87(2)(b) was issued a § 87(2)(a) 160.50 summons at 3:50 PM by PO Joaquin Morales, who was assigned, with eight other officers including PO Torres, to a Mobile Response van. § 87(2)(b) arrested § 87(2)(a) 160.50 at 5:07 PM by PO Cotters, who brought him to the stationhouse, and gave the arrest to PO Torres, who was in the stationhouse at the time. PO Torres, a young officer with no prior § 87(2)(b) arrests, mistakenly issued § 87(2)(b) § 87(2)(a) 160.50 in addition to processing his § 87(2)(a) 160.50 arrest. § 87(2)(a) 160.50

PO Alex Torres

PO Torres was interviewed by the CCRB on 3/5/03 (Encl. 13a-d). He stated, and his memo book confirmed, that he worked a 4-12 tour, assigned to the Mobile Response Unit, on the date of the incident. PO Torres was in uniform, in a marked van with about eight other officers. He did not encounter § 87(2)(b) in the street prior to seeing him in the stationhouse.

On the date and time of the incident, PO Torres had been in the stationhouse for about 45 minutes for administrative reasons, prior to which he had been assigned to Mobile Response in a marked van. PO Cotters brought a relatively calm § 87(2)(b) into the stationhouse. PO Torres was looking for an arrest, so PO Cotters gave him § 87(2)(b)'s arrest. PO Cotters informed PO Torres that § 87(2)(b) was at Southern Blvd. and Elmsmere, blocking pedestrian traffic. He'd been warned twice to move, but did not do so, so PO Cotters arrested him § 87(2)(a) 160.50. PO Cotters did not provide PO Torres with any additional information about the arrest.

PO Torres searched § 87(2)(b) by the desk, recovering a crack pipe in his left pants pocket. He also recovered a summons § 87(2)(a) 160.50 written earlier that day, but did not recall any other information about the summons. § 87(2)(b) began cursing profusely at PO Torres as he was being searched. § 87(2)(b) was placed in a cell, where he continued to curse at PO Torres, who attempted to calm him down, but who did not use any profanity. PO Torres did not recall which other officers were in the cell area at that time, but described PO Ortiz as an officer from that command matching the description provided by § 87(2)(b). PO Torres does not recall any other officers attempting to quiet § 87(2)(b) or using profanity towards him. He does not recall an officer speaking to PO Cotters over a Nextel.

PO Torres had not made a § 87(2)(a) 160.50 arrest before, and mistakenly gave § 87(2)(b) a § 87(2)(a) 160.50 summons, thinking it was part of the § 87(2)(a) 160.50 arrest processing. PO Torres spoke with an ADA the next day and had the summons dismissed.

PO Torres was told that there were allegations that he had approached § 87(2)(b) earlier in the day, in an unmarked car, and issued him summons. He denied these allegations.

PO Patrick Cotters

PO Cotters was interviewed by the CCRB on 1/21/03 (Encl. 8a-b), and stated that on the date of the incident, he was patrolling sector E with PO Carney. PO Cotters first observed § 87(2)(b) standing on the sidewalk at the corner of Elmsmere and Southern Blvd, about a block from Tremont and Southern Blvd. § 87(2)(b) was with a group of people, and PO Cotters stated "What I observed was a bunch of crackheads

on the corner of Elsmere and Southern,” stating that that location was where crack users hang out. Either PO Cotters or his partner told the group to move, because it was a heavy drug location. Everybody left the area. However, five minutes later, the officers returned to the location, to find § 87(2)(b) on the yellow line in the middle of the road, stopping vehicles, and trying to speak to someone through the window of their car. Another vehicle was stopped behind the first car, where § 87(2)(b) was speaking. PO Cotters felt he may have been making some kind of drug deal.

As they approached, § 87(2)(b) walked away, stating he was trying to get change for the bus. They told § 87(2)(b) to stop, and asked him to put his hands behind his back. They arrested him § 87(2)(a) 160.50, without resistance. PO Cotters stated he may have made a statement about § 87(2)(b) being given a chance to leave but denied stating “we gave you the chance to leave, asshole,” or using any other profanity. He never called § 87(2)(b) “dickbreath.”

PO Cotters frisked § 87(2)(b) and found a crack stem on an unknown part of his person.

PO Joaquin Morales

PO Morales was interviewed by the CCRB on 6/23/03 (Encl. 15a-e). He stated that on the date of the incident, he worked first from 6 AM to 2:35 PM, assigned to a plainclothed anticrime unit in a green Impala. Anticrime is his steady assignment. He then worked from 0300 to 1135, in uniform, in a Mobile Response van with eight other officers whose names he does not recall, with the exception of his partner, PO Vetrano. He stated that he has never shared this assignment with PO Torres and does not recall working with him on this date. The responsibilities of Mobile Response include both backing other units and being assigned to jobs. Issuing summons from such a unit is not unusual.

PO Morales has no recollection of issuing § 87(2)(b) summons on this date. He was presented with copies of the summons he issued to § 87(2)(b) but this did not refresh his recollection. He was shown a picture of § 87(2)(b) whose face he knows from the neighborhood, but he does not recall having any police interaction with § 87(2)(b) on this or any other date. PO Morales stated he was unaware that § 87(2)(b) was arrested later in the day § 87(2)(a) 160.50.

PO Morales stated that there are no beige Impalas in his command, to his knowledge.

PO Julio Ortiz

PO Ortiz was interviewed by the CCRB on 5/19/03 (Encl. 14a-d), and was working a 4-12 on the date of the incident. He stated that shortly after the beginning of his tour, he was doing paperwork in the stationhouse when § 87(2)(b) was brought into the precinct by PO Cotters. § 87(2)(b) was screaming and yelling when brought by the desk, where PO Ortiz was working. § 87(2)(b) whom he described as a “total EDP,” was cursing at the officers, insulting PO Cotters’ mother, and yelling racial insults at other officers in the command while challenging them to fight.

PO Ortiz was by the desk and recalls PO Torres being present, but did not see him search § 87(2)(b) and was unaware he took the arrest or that a crack pipe had been found on § 87(2)(b). § 87(2)(b) was eventually placed into a cell, where he continued to be profane and insulting, and called PO Cotters “white trash,” and a “sellout.” He was also saying “fuck you,” and “fuck your mother” to officers in the area near the cell. § 87(2)(b) additionally made statements such as “I have a direct line to the CCRB” and “I know how to take care of you guys.” Many attempts were made by various officers to quiet § 87(2)(b) down, but PO Ortiz stated he did not recall doing so himself. PO Ortiz denied using any profanity towards § 87(2)(b). He also denied informing PO Cotters via Nextel that “this asshole you arrested is calling you names.” PO Ortiz does carry a Nextel.

PO Ortiz stated that when he heard § 87(2)(b) make these statements from the cell area, PO Ortiz was already in the process of going to speak to PO Cotters about something unrelated to this arrest. PO Ortiz stated, “I went to speak to Officer Cotters about something that had nothing to do with this, and that’s when I heard him § 87(2)(b) yelling and screaming.” PO Ortiz stated that while by the desk, the cells are only about fifteen feet away, and while at the desk, you can see and hear the cell area. PO Ortiz stated that he was talking to PO Cotters near the cell/desk area.

Documents

A § 87(2)(a) 160.50 summons was issued to § 87(2)(b) on 8/11/03 at 3:50 PM by PO Morales, at the intersection of Elsmere and Crotona Parkway (Encl. 16a-b). § 87(2)(a) 160.50

A second § 87(2)(a) 160.50 summons was issued to § 87(2)(b) at 5:05 PM on the same date by PO Torres (Encl. 17a-b). § 87(2)(a) 160.50

§ 87(2)(a) 160.50

PO Torres' arrest history was run in BADs (Encl. 24) and it was confirmed that of the nine arrests the officer had made prior to § 87(2)(b) he had not had any with a disorderly conduct charge.

The radio run (Encl. 25a-b) indicates that Sector E arrested § 87(2)(b) at 5:07 PM at Elsmere Place and Southern Boulevard. A telephone call to NYPD Employee Verification on 6/27/03 indicates that PO Cotters worked in the 048 from 1990-1998, and again from 2000 to the present. PO Ortiz has worked in the 048 since 1987.

Arrest and CCRB History

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

§ 87(2)(b) filed three other complaints with the CCRB at the time he filed this complaint (see Encl. 6a-d for CCRB history and other complaint reports). § 87(2)(g); § 87(2)(b)

§ 87(2)(b)

PO Cotters has an extensive CCRB history. In his thirteen year tenure, he has received a total of 12 cases with 29 allegations against him, including two substantiated force allegations, a substantiated threat of force allegation, and a substantiated discourtesy allegation. These substantiated allegations stemmed from a case in 1993, however, DAU would not provide information about any discipline received by PO Cotters in connection with this case. In addition, PO Cotters has two unsubstantiated discourtesy complaints, and an unsubstantiated vehicle search complaint. He currently has twelve pending CCRB allegations, all stemming from complaints made by § 87(2)(b) which were investigated by the undersigned investigator.

PO Ortiz also has an extensive CCRB history. In his sixteen year tenure, he has received a total of 45 CCRB allegations stemming from nineteen cases. Thirty of these allegations were unsubstantiated, three were substantiated, and only two were exonerated. Of those 45 allegations, over a third of them (16 in total) were discourtesy allegations, including a substantiated curse allegation in 1989, for which he received command discipline. According to that CCRB complaint report, PO Ortiz was substantiated for

having said, “You better get that fucking grin off your face because I could be your worst fucking nightmare.” Almost all of PO Ortiz’s other discourtesy allegations were unsubstantiated.

PO Morales has a five year NYPD tenure with one prior complaint (threat of force) which was unfounded (Encl. 9).

Conclusions and Recommendations

§ 87(2)(b), § 87(2)(g)

PO Cotters stated that § 87(2)(b) refused to leave the corner of Southern Blvd. and Elsmere Pl. when asked to do so. § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b) alleges that between 2:30 and 4:30, he was stopped and issued a summons by PO Torres, who was in a beige unmarked Impala at the time. § 87(2)(g) At 3:50, § 87(2)(b) was issued a summons by PO Morales, who was in a mobile response van at that time, not an unmarked beige Impala. § 87(2)(g)

§ 87(2)(b) additionally alleges that he was frisked through the window of the beige Impala by PO Torres. § 87(2)(b) describes that his leg/chest area was patted down by PO Torres. § 87(2)(b), § 87(2)(g)

§ 87(2)(b) alleges that while being issued the summons, PO Cotters drove by and referred to him as “dickbreath.” He also alleges that after being arrested by PO Cotters, the officer stated “we gave you a chance to leave, asshole.” § 87(2)(b), § 87(2)(g)

§ 87(2)(b) also alleges that while in the stationhouse, a Hispanic officer said “this asshole you arrested is calling you names” to PO Cotters over a Nextel. § 87(2)(b) describes this officer as about 240

lbs, bald, with a mustache, about 6'2". § 87(2)(b), § 87(2)(g)

PO Ortiz describes § 87(2)(b) as being extremely agitated in the stationhouse. PO Torres confirms that § 87(2)(b) became agitated as he was being searched, and recalls him calling PO Cotters names and called him a "motherfucker." PO Ortiz also recalls § 87(2)(b) insulting PO Cotters' mother, and referring to PO Cotters as "white trash." § 87(2)(b), § 87(2)(g)

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PD v. Cruz (OATH Index 303 & 310/98; Encl. 4) deals with this situation. In that case, an officer referenced the civilian as an "asshole" during a traffic stop. PD v. Cruz states, "As to (respondent's) behavior, it is entirely irrelevant that he did not utter his words directly to Mr. Johnson," and references several other cases where similar reasoning was applied (in those cases, in regards to racially offensive language). Several other factors indicate that such behavior would constitute misconduct. PD v. Nieves (OATH Index 1888/99, Encl. 2) states that an officer must be able to handle disgruntled members of the public in difficult situations without losing control. Similarly, PD v. Miller (OATH Index 2127/00; Encl. 5), when discussing an officer's use of the word "bitch," states "...these comments reflected only the respondents anger towards (civilian) and constitute a violation of the Department guidelines on discourtesy." § 87(2)(g)

§ 87(2)(b) also alleges that PO Ortiz referred to him as a "faggot." § 87(2)(b), § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: